

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5954 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MARWADI LALJI NAVALJI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 5954 of 2001
MR NM KAPADIA for Petitioner No. 1
MR JOSHI, ASSTT. GOVERNMENT PLEADER for Respondents No. 1-3
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/01/2002

ORAL JUDGEMENT

The petitioner has been detained under the PASA Act, by virtue of order passed by the District Magistrate, Mehsana on July 12, 2001.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered five registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate Mr. Kapadia appearing for the petitioner has submitted that apart from other grounds, there is gross delay in passing the order. The satisfaction for the need for detention therefore cannot be said to be genuine. Mr. Kapadia submitted that the last registered offence relates to 28.3.2001. The statements of the witnesses are recorded on 18th and 19th of May, 2001 and verified on 20th of May, 2001. Against this, the order is passed on 12th July, 2001. The urgent need for preventing the petitioner from pursuing his activities and recording of satisfaction for exercise of power under PASA Act therefore cannot be considered to be genuine. The detention is therefore vitiated and the petition may therefore be allowed.

4. Learned AGP Mr. Joshi has opposed this petition.

5. Having regard to rival side contentions although number of contentions are raised in the petition, learned Advocate mainly relies on the ground of delay and rightly so. The statements of anonymous witnesses have been recorded on 18th and 19th of May, 2001 and verified on 20th May, 2001. The order came to be passed on 12th of July, 2001. The grounds of detention indicate that the detaining authority has recorded satisfaction for the need for exercise of powers under PASA Act in order that the petitioner is required to be immediately prevented from pursuing his illegal activities. The material was before the detaining authority on 20th May, 2001 and till 12th July, 2001 no action is taken. It indicates that there is a gross delay in passing the order. The satisfaction recorded by the detaining authority cannot be considered to be genuine. The exercise of power is therefore vitiated and consequently, the detention.

6. The petition is therefore, allowed. Order of detention dated July 12, 2001 passed by the District Magistrate, Mehsana is quashed and set aside. Detenu Marwadi Lalji Navalji be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas